IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.8005 of 2004

Between:

P.Sadguru Murthy, s/o late P.Adinarayana Murthy, 57 years,
Occ:Working as Divisional Engineer, A.P.Transco, r/o Hyderabad.

...PETITIONER

AND

1. A.P.Transco, rep.by its Chairman, Vidyuth Soudha, Hyderabad.
2. The Government of Andhra Pradesh, rep.by its Principal Secretary, Energy, (SCR) Department, Secretariat Buildings, Saifabad, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in not promoting the petitioner to the post of Superintending Engineer, in spite of his name being empanelled for promotion by DPC in the month of October, 2001 as arbitrary, illegal and violative of the Fundamental Rights guaranteed to the petitioner under Articles 14 and 16 of the Constitution of India and issue a consequential direction to the 1st respondent to promote the petitioner to the post of Superintending Engineer from the date anterior to the promotion of his junior Sri T.Prabhakar and further declare the entitlement of the petitioner for all the consequential monetary and other service benefits.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent No.1: MR.SAMINENI KISHORE

Counsel for the respondent No.2: GP for Irrigation & CAD

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.8005 of 2004

ORDER:

Heard both sides.

The petitioner herein, who had been working as a Divisional Engineer in A.P.Transco, filed this Writ Petition, *inter alia*, seeking a writ of mandamus declaring the action of the first respondent herein in not promoting him to the post of Superintending Engineer, in spite of his name being empanelled for such promotion by the DPC in the month of October 2001, as arbitrary and illegal and a further direction to promote him to the said post, more so, from the date of promotion given to his junior namely Sri T.Prabhakar.

The case of the petitioner, in brief, is that initially he was appointed in the year 1972 as an Assistant Engineer and later on he was promoted to the post of Divisional Engineer in the year 1977. According to seniority and other record of service, he became eligible for promotion for the post of Superintending Engineer in the year 2001 itself. In the DPC meeting conducted in October 2001, his name was

empanelled as an eligible candidate. However, having regard to the fact that at the relevant point of time, an FIR in Crime No.12 of 2001 was filed against the petitioner by the Anti Corruption Bureau (ACB) officials on the allegation of his possession of assets disproportionate to the known sources of income. Therefore, the petitioner's promotion was not given effect to but his juniors were promoted and they have been working.

The further case of the petitioner is that even though the alleged case was registered in the year 2001 itself, so far no charge sheet has been filed and further steps have not been taken to conduct the case. In view of the same, the main ground on which the present Writ Petition is filed is that having regard to the fact that there is no penalty, much less, any progress in the criminal case, though it has been pending for quite a long time, the same cannot be gone into against the petitioner denying his promotion to which he is entitled to. Hence, the Writ Petition.

In the counter-affidavit, it is stated that though the petitioner was empanelled in the DPC in October 2001 itself, however, it is only due to the factum of pendency of the criminal case with the ACB in regard to the allegation of possessing of assets disproportionate to the known sources of income, his case was not considered. Therefore, there are absolutely no merits in the Writ Petition and the same is liable to be dismissed.

The learned counsel appearing for the petitioner submitted that as per the latest developments from the ACB with reference to the notice in R.C.No.12/ACB-CR/2001 dated 25.02.2005, it is stated that the process of investigation is going on

and no charge sheet has been filed. In fact the original complaint with regard to the alleged assets possessed by the petitioner was up to Rs.29 lakhs but ultimately in the present communication mentioned above, it was shown as Rs.4,83,392/-. From the aforesaid communication, it is seen that no further steps have been taken to proceed with the case. Admittedly, no charge sheet is filed. It is also pointed out that mere pendency of such case is absolutely no bar even under the regulations as framed by the first respondent herein. Even from the proceedings issued by them, it is evident that the case of the petitioner has come up for consideration only because there is no such bar against consideration. Therefore, it is contended that having included his name in the panel and there being no penalty of the proceedings against him, his case has to be considered.

In support of his contention, the learned counsel for the petitioner placed reliance on the judgment of this Court in ***M.Gangi Reddy v. A.P.Transco Ltd.***, wherein the learned Single Judge held that in the absence of any penalty or progress in the criminal case, there is no bar for considering promotion. Further, the learned counsel also placed reliance on the two decisions of the Apex Court in ***Union of India v. K.V.Jankiraman*** and ***Union of India v. Dr.Sudha Salhan*** wherein it was held that the procedure of keeping one's name for promotion in a sealed cover is not justifiable and he has right to be considered for promotion where there is absolutely no progress in the criminal investigation or trial.

Having considered the submission made on both sides and on perusal of the material available on record, it is evident that the only question which comes up for consideration is as to whether the case of the petitioner can be denied for the

promotion merely on the ground of pendency of the criminal case with the ACB.

There is no dispute with regard to the basic fact that the petitioner had been in service since the year 1972 and became eligible to the post of Superintending Engineer by the year 2001 itself. Further, it is also admitted that in the DPC meeting held in October 2001, the name of the petitioner was selected and empanelled but due to the pendency of the criminal case with the ACB he was not promoted. As already held by this Court in ***M.GangiReddy v. A.P.Transco Ltd.*** (1 supra) and also in view of the principles laid down by the Apex Court in ***Union of India v. K.V.Jankiraman*** and ***Union of India v. Dr.Sudha Salhan*** (2 & 3 supra), in a case where charge sheet has not been filed in spite of the fact that the case filed in the year 2001, the procedure of sealed cover and denial of promotion cannot be justified. As the petitioner was already in the panel, there cannot be any impediment in promoting him to the next higher post.

The Writ Petition is accordingly allowed. The respondents are directed to consider the petitioner's case for promotion to the next higher post i.e. Superintending Engineer with all consequential benefits to which he is entitled to under law.

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(B.PRAKASH RAO, J)

15th March 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the 15th day of March Two thousand and five.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Chairman, A.P.Transco, Vidyuth Soudha, Hyderabad.
2. The Principal Secretary, Energy, Government of Andhra Pradesh, (SCR) Department, Secretariat Buildings, Saifabad, Hyderabad.
3. Two CD copies.

4. GP for Irrigation & CAD, High Court Buildings, Hyderabad (OUT).